

Carrer Rosselló, 214, esc. A, 1st 1st
08008 Barcelona

File identification

Archive resolution of the previous information no. IP 22/2021, referring to the General Directorate of the Police of the Department of the Interior.

Background

1. On 20/01/2021, the Catalan Data Protection Authority received a letter from a person for which he made a complaint against the General Directorate of the Police of the Department of the Interior, on the grounds of an alleged breach of the regulations on personal data protection.

Specifically, the complainant stated that she was the lawyer of Mrs. (...). On 18/09/2020, your client submitted a request to cancel police records.

In this request, her client designated the professional office of the complainant (the lawyer) as the address for notifications, specifically, the address (...) in Barcelona.

According to the complainant, the DGP informed him that the resolution of the police records cancellation file was notified on 11/11/2020, notification that would have been made by certified letter to the indicated address for his client.

However, the DGP had refused to provide the complainant with the specific details of the delivery citing data protection regulations.

According to the person making the complaint, the certified letter containing the resolution of the file had not been notified to him nor had it been collected at his professional address. For this reason, he demanded an investigation into the notification procedure carried out by the Post Office.

The reporting person provided various documentation relating to the events reported.

2. The Authority opened a preliminary information phase (no. IP 22/2021), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure of application to the areas of competence of the Generalitat, and article 55.2 of Law 39/2015, of October 1, on the common administrative procedure of public administrations (henceforth, LPAC), to determine whether the facts were capable of motivating the initiation of a sanctioning procedure.

3. In this information phase, on 06/04/2021 the reported entity was required to report on:

- If the resolution of the police record cancellation file had been notified to the address that the interested person had indicated in his written request.

Carrer Rosselló, 214, esc. A, 1st 1st
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- In the event that the notification was not made at the address indicated in section 1, indicate the specific address where the notification would have been made and explain the reason why it was notified to an address other than the one designated by the person concerned.
- Bring a copy of the proof of delivery of the certified letter, which specifies the person and address where the service was served.

4. On 20/04/2021, the DGP responded to the aforementioned request through a letter in which it set out the following: - The address that the interested person had indicated in their letter of request was notified .

"It should be noted that the resolution was notified twice to the indicated address."

- Attached to the letter of response the respective proofs of acknowledgment of receipt of the two notifications which contained the details of the notification: the name and surname and the NIF of the person who collected the notifications.

Fundamentals of law

1. In accordance with the provisions of articles 90.1 of the LPAC and 2 of Decree 278/1993, in relation to article 5 of Law 32/2010, of October 1, of the Authority Catalan Data Protection Agency, and article 15 of Decree 48/2003, of February 20, which approves the Statute of the Catalan Data Protection Agency, the director of the Catalan Data Protection Authority.

2. Based on the account of facts that has been set out in the background section, it is necessary to analyze the reported facts that are the subject of this file resolution.

The complainant complained because he had not received the notification of the resolution of the police record cancellation file requested by his client. He argued that the certified letter containing the aforementioned resolution had not been collected by the persons authorized to receive said notification at the address indicated for notification purposes, that is, the address of his professional office. Likewise, he stated that the DGP reported that he had record that "Correus" had delivered the notification by certified mail, but did not report the details of the notification. For this reason, he suspected that a third party unrelated to the administrative procedure would have been notified, violating data protection regulations.

For its part, the DGP stated, in its letter of response to the Authority's request dated 04/20/2021, that the resolution of the aforementioned file was indeed notified to the address that the interested person had indicated in your application letter. In addition, the notification had been practiced twice.

Regarding the proofs of acknowledgment of receipt of the two certified letters relating to the mentioned notification provided by the DGP, it contains the following information:

Carrer Rosselló, 214, esc. A, 1st 1st
08008 Barcelona

Acknowledgment of receipt of first notification:_____

Recipient: Ms. (...), Street (...) (Barcelona)
The subscriber declares that the shipment has been: Delivered
Receiver signature: Covid
Date: 11/11/2020
DNI: (includes the NIF of the person who receives the letter)
Relationship with the recipient: Goalkeeper
First and last name: (...)
First delivery attempt: Delivered to home
Date: 11/11/2020
Time: 10:10

Acknowledgment of receipt of second notification _____

Recipient: Ms. (...) (Lawyer Ms. (...), Carrer (...) (Barcelona)
The subscriber declares that the shipment has been: Delivered
Receiver signature: Covid
Date: 28/01/2021
DNI: (includes the NIF of the person who receives the letter)
Relationship with recipient: (illegible)
First and last name: (...)
First delivery attempt: Delivered to home
Date: 28/01/2021
Time: 10:35

According to the proof of mail provided by the DGP, in both cases it was delivered to the address that the interested person had designated for notification purposes. The first proof shows that the certified letter was delivered on 11/11/2020 and the identity of the person who collected it was recorded (name and surname and VAT number).

In relation to paper notifications, it is necessary to go to article 42.2 of Law 39/2015, of October 1, on the common administrative procedure of public administrations (LPAC), which provides:

"When the notification is made at the domicile of the interested party, if he is not present if this is present at the time of delivery of the notification, any person over the age of fourteen who is in the home and has their identity recorded can take charge of it. If no one took charge of the notification, this circumstance will be recorded in the file, together with the day and time when the notification was attempted, the attempt will be repeated only once and at a different time within three days following In case the first notification attempt

Carrer Rosselló, 214, esc. A, 1st 1st
08008 Barcelona

if it has been made before fifteen hours, the second attempt must be made after fifteen hours and vice versa, leaving in any case at least a margin of difference of three hours between both notification attempts. If the second attempt will also be unsuccessful, it will proceed in the manner provided in article 44.

In the case under analysis, the notification was made to the address designated by the client of the complainant (the lawyer's professional address). The recipient of the two notifications was the same person in both cases and was identified by name, surname and NIF. The proof of receipt also specifies the relationship of the recipient of the certified letter with the person to whom it is addressed, specifically, "Porteria". In accordance with this, the person who collected the two notifications, which in both cases is the same person, is the person in charge of the concierge services of the designated address for the purposes of notifications.

In relation to the reception of notifications by the porter or caretaker of buildings under horizontal ownership, jurisprudence has considered that the notification is correct when the receiver is the porter or caretaker of the building. According to the jurisprudence, however, STS 2269/2010 of March 4, 2010 in cassation appeal no. 2421/2005, FJ Cincè:

"When the recipient of the notification is not the interested party or tax payer, the Law and our jurisprudential doctrine, as a rule, require full identification, by indicating their number and their relationship with the owner of the domicile (kinship or dependence), which constitutes, in short, the "reason for permanence in the same", as warned in article 80.2 of the LPA of 1958 in the current season. In addition, the dependency does not have to be exclusive with employee, the final recipient, as shown only by the contemporary social reality, according to the prevailing ways of life (article 3.1 of the Civil Code), the direct and immediate, but multiple, link of the porter or caretaker with the co-owners or simply neighbors of the building, to los cuales sirve en tal puesto para ésta y otras tareas subalternas » [Sentence of October 24, 2001 (rec. cas. no. 385/1996), FD Segundo; in similar terms, Sentencias of October 8, 2002 (rec. case no. 7881/1997), FD Cuarto A) and B); and of September 25, 2009 (rec. case no. 3545/2003), FD Cuarto."

The sentence adds: "(...) and what such an employee or porter does after receiving the notification is outside the scope of what the precept provides to understand that notification has been correctly made,"

In short, in accordance with the cited jurisprudence, porters or janitors are authorized persons to receive notifications from the residents of the buildings as employees to whom they provide services, among which is the reception of correspondence from the residents of the building
On the basis of this reasoning, the Supreme Court has declared that they are valid

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08008 Barcelona

notifications made to porters and janitors, as long as their identity is recorded, as is the case in this case.

In this specific case, in the proof of receipt of the certified letter dated 11/11/2020, it states the identity of the recipient of the certified letter, as well as the relationship with the recipient, in particular, it is the doorman of the building. From the point of view of the protection of personal data, the treatment is lawful in accordance with article 6.1.c) of the RGPD, because the treatment is necessary for the fulfillment of a legal obligation, in accordance with article 40 of the in relation to 42.2, both of the LPAC. On the other hand, the principle of confidentiality established in article 5.1 f) of the RGPD is also not violated, given that article 42.2 of the LPAC entitles any person over fourteen years of age to receive the notification on paper is at home, as long as their identification is recorded, employees are among the people entitled to receive the notification. In this regard, the Supreme Court considers the porters and janitors of the buildings employed by the residents and among the tasks assigned to them is that of receiving correspondence from the residents.

3. In accordance with everything that has been set out in the 2nd legal basis, and given that during the actions carried out in the framework of the previous information it has not been accredited, in relation to the facts that have been addressed in this resolution, no fact that could be constitutive of any of the violations provided for in the legislation on data protection, should be archived.

Therefore, I resolve:

1. File the actions of prior information number IP 22/2021, relating to the General Directorate of the Police of the Department of the Interior.
2. Notify this resolution to the General Directorate of the Police of the Department of the Interior and to the person making the complaint.
3. Order the publication of the resolution on the Authority's website (apdcat.gencat.cat), in accordance with article 17 of Law 32/2010, of October 1.

Against this resolution, which puts an end to the administrative process in accordance with article 14.3 of Decree 48/2003, of 20 February, which approves the Statute of the Catalan Data Protection Agency, the persons interested parties may file, as an option, an appeal for reinstatement before the director of the Catalan Data Protection Authority, within one month from the day after their notification, in accordance with what provided for in article 123 et seq. of Law 39/2015. An administrative contentious appeal can also be filed directly before the administrative contentious courts, within two months from the day after its notification, in accordance with articles 8, 14 and 46 of Law 29/1998, of July 13, governing the contentious administrative jurisdiction.

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Likewise, interested parties may file any other appeal they deem appropriate to defend their interests.

The director,

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